ENFORCEMENT

About the Pilot

2-1. PRP Search Pilots

The primary goal of the PRP search pilots was to determine whether the time line proposed in the Superfund Reform Act (SRA) of 1994 (H.R. 4916, 103rd Congress) can be accomplished through completion of early PRP Searches. In addition, EPA piloted several techniques developed to streamline and improve the PRP Search process.

In the Spring of 1995, 15 candidate sites were identified where PRP searches had just begun or were about to be initiated. To test the relevant provisions contained in SRA, each pilot site was set up to conform as nearly as possible to a time frame that would lead to notification of potential *de minimis* parties within 12 months after the search start and notification of all other parties within 18 months after the search start. Additionally, each pilot tested one or more streamlining techniques identified during a national PRP search conference.

Piloted streamlining techniques included: exploring the use of radio announcements, newspaper advertising, and toll free telephone numbers to solicit information about PRPs from the public; conducting early interviews of parties to obtain information and minimize the need for multiple rounds of information requests; and establishing a publicly available repository for PRP Search information, to assist PRPs in identifying other PRPs earlier in the enforcement process.

PRP searches at the 15 piloted sites varied widely in their duration and scope, resulting from variation in site size, the number of PRPs, nature and extent of contamination, available documentation, and level of state involvement.

None of the 13 sites that had potential *de minimis* parties notified those parties within 12 months of the search start date. Five sites made the 18 month deadline for notifying all other parties within 18 months of the search start date. Today's Superfund enforcement program must be supported by a PRP search program that incorporates today's enforcement goals – thorough investigation, identification of all parties, and greater involvement of PRPs in the PRP search. The results of the PRP search pilots, as well as previous PRP search improvement efforts and evaluations, serve as a building block for EPA's efforts currently underway to enhance PRP searches.

The national PRP Search Enhancement Team (Team) was formed by Office of Site Remediation Enforcement (OSRE) in early 1997. The Team has worked closely with regional PRP search staff to identify, develop and prioritize a number of tasks designed to support and promote an enhanced PRP search process.

BENEFITS

- Several streamlining techniques were found to be beneficial and improved PRP searches. At one site, use of the new model information request letter was instrumental in identifying 150 additional parties early in the search process. At another site, an early interview led to valuable information about other parties, and assisted in a better understanding of business practices contributing to contamination of that site. Also, the use of a publicly available repository for PRP search information was very helpful in providing valuable information to PRPs and a local community group, and led to nomination of additional parties earlier in the search process.

Through mid-1998, the Team and regions will perform a number of tasks, including the following:

- Sponsor a national PRP Search Enhancement Conference
- Develop a national enforcement network to facilitate information sharing efforts
- Develop fact sheets and checklists to assist regional search staff on subjects such as:
  - Parameters for PRP Involvement in PRP Searches
  - Corporate Successor/Parent-Subsidiary Issues
  - On-Line Resources for PRP Searches
  - Information Request Letter Tracking and Followup
  - Removal Search Activities
- Best practices

In addition to these tasks, OSRE will continue to incorporate PRP search enhancement concepts in all relevant Superfund enforcement training programs and materials as well as continued development of PRP search guidance materials. ■

Concepts & Lessons Learned

The SRA goals of notifying *de minimis* parties within 12 months and other PRPs within 18 months of the search start are currently unrealistic for most Superfund sites. SRA time frames were too ambitious for the piloted sites, and would most likely be too ambitious for a majority of Superfund sites. There is a balance between speed and comprehensiveness in the PRP search process.

Although the causes of difficulty in adhering to the SRA time line were numerous and often site specific, three factors were common to a number of sites:

(1) Many PRPs/Complex Sites

(2) Troublesome Hazardous Substances (i.e., mixed radioactive waste)

(3) Uncooperative PRPs.

The five pilot sites where the 18 month goal was met generally had fewer PRPs and no significant complications. Given ideal circumstances, it appears that some PRP searches can meet the SRA time frames. However, it seems unlikely that PRP searches at larger, more complex sites can regularly be completed this quickly.

Early interviews of people with knowledge of a site was the technique most commonly cited as being effective in increasing the speed and efficiency of PRP searches. Consideration should be given to devoting more resources to interviews at an early date, particularly by making civil investigators available early in the PRP search process.

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About the Pilot

2-2. Expedited Settlement Pilots

EPA announced the expedited settlement reform in 1995 to reduce transaction costs for all potentially responsible parties (PRPs) at Superfund sites through early settlements. The reform was designed to encourage early (i.e., pre-ROD) *de minimis* settlements; encourage ability to pay settlements with *de minimis* PRPs who demonstrate they cannot pay their full share of response costs at the site; and give PRPs the opportunity to nominate other PRPs who they believe are also responsible for site cleanup.

From the pilot's inception through the end of FY97, EPA achieved early *de minimis* settlements at eight pilot sites, ability to pay settlements at three pilot sites, and solicited nominations of additional PRPs at five of the eight pilot sites which had achieved an early *de minimis* settlement.

The early *de minimis* settlements were achieved at the following Superfund sites: Solvents Recovery; Tri-Cities Barrel Co., Inc.; Elizabethtown Landfill; Taylor Road; Arcanum Iron & Metal; Hansen Container; Bennington Landfill; and Tulalip Landfill. These settlements were reached with approximately 488 *de minimis* parties, resulting in recovery of approximately $14.8 million. Three of these settlements were achieved in FY97 with 22 *de minimis* parties for approximately $3.4 million. From the pilot's inception, ATP settlements were achieved with a total of 22 parties: 20 at the Solvents Recovery Site; one at the Tulalip Landfill site; and one at the Arcanum Iron & Metal Site. ■

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Concepts & Lessons Learned

- The key elements of efficiently reaching early *de minimis* settlements were complete information, the type and quantity of waste, a good PRP search, and the existence of reliable cost estimates early in the process.
- The ability to pay settlement goals have been difficult to meet for the following reasons:
  1) at some sites, no PRPs are found who meet the ability to pay criteria;
  2) small parties sometimes ignore EPA's requests for financial information to prove the party's limited ability to pay the full settlement amount; and
  3) PRPs sometimes submit incorrect information that requires additional research.

About the Pilot

2-3. The Allocation Pilots

The Agency commenced the Allocation Pilots in May 1995, offering a fundamentally different approach to allocating Superfund costs between parties. Under the pilot, a neutral is selected by the parties (an "allocator") who conducts a non-binding out of court process resulting in an allocation report (i.e., where each allocation party is assigned a share of responsibility). Parties may then offer to settle with EPA based on their allocated share. Under the pilot, EPA is responsible for 100 percent of the orphan share, which consists of the shares of allocation parties which are insolvent or defunct.

Status

EPA offered the pilot at twelve sites. At three sites, parties declined to enter the pilot because they believed they could reach settlement outside of the allocation process or already had performed a private allocation. At the nine remaining sites, the allocation pilots are at various stages. For example, at two sites the allocator issued a report reflecting an agreement regarding the shares of responsibility between the parties. At another site, the parties reached an agreement on shares and the allocator was dismissed. At a fourth site, the majority of parties settled (i.e., for the performance and funding of the response action), but the allocator recently issued a report identifying shares for the parties which did not join the settlement. For most of the remaining sites, the parties have selected an allocator and are in the midst of the allocation process.

Implementing the Process

After two years of implementing the pilots we have gathered useful information concerning the allocator selection process and need for a protocol document between the parties participating in the pilot.

Selecting the Allocator

In selecting an allocator, parties have uniformly agreed to use a convening process. Through the use of a neutral (a convener), the parties selected an allocator by interviewing several candidates and then reaching a consensus agreement on the best person for that site. At all pilot sites the parties agreed to choose solely from the 37 candidates qualified through the Agency's procurement process. Parties believed the level of experience presented by the candidates and the information provided was sufficient to choose an allocator.

Need for Protocol Document

In designing the pilots the Agency believed that a basic confidentiality agreement and litigation tolling agreement (i.e., so no party would sue each other during the allocation) was sufficient to implement the pilots. However, parties wanted to negotiate procedures for the number of interviews with witnesses, timeframes for submission of documents to the allocator, and identify equitable factors for the allocation. The allocators wanted these issues to be resolved amicably between the parties. Negotiating a protocol agreement has taken between one to four months, depending on the number of issues to be addressed and the number of parties at the site. To save time the parties negotiated the allocation protocol during the time the Agency is formally entering into the contract with the selected

(continued see ***Protocol)***

***Protocol** continued...*

allocator. The neutral who convened the selection process has also assisted in developing the protocol agreement. ■

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Reform Evaluation

Since the commencement of the pilots in 1995, EPA has been gathering information from the participants, including PRPs, allocators and Regional staff, concerning time spent and resources expended, general impressions of fairness of the process, and the overall implementability of the process.

1. Time - Where an allocation report has been issued, the average time spent to complete the allocation process was 20 months. This includes the time spent identifying additional parties, selecting the allocator, entering into the protocol document, and performing information gathering by the allocator. It also includes time spent filing briefs, conducting oral arguments, and issuing the draft and final allocation report. The time frame is expected to increase for the total group of pilots to approximately 24 months because a number of sites are taking significantly longer than the 20 month period.

2. Resources - Parties who participated in the pilot estimated they expended $48,000 per party in transaction costs. Approximately 75 percent indicated that the transaction costs were lower than traditional contribution litigation costs. The average cost to the Government (EPA and the Department of Justice) for conducting an allocation (for this group of sites) was approximately $421,000 per site. This includes both intramural and extramural costs. In addition, the average cost for the services of the Allocator were approximately $193,000 per site. At one site, neutral costs were significantly higher as both allocators and mediators were used.

3. General Observations- Private parties agreed to participate in the pilot because: EPA was funding 100 percent of the orphan share; parties believed the process would be more cost efficient than current Superfund litigation; and the party could enter into a fair share settlement.

At the end of the process, parties views on the pilot were mixed. Several parties thought the share assigned to them in settlement was fair considering the level of information available, but others felt that their share was not fair believing that major corporations with greater resources were better able to influence the allocator and/or the Agency. While a number of companies believed the actual costs expended were less than litigation, several small businesses felt the process was not cost effective for them - commenting that transaction costs associated with the allocation process may actually be higher since many felt they had to participate in the process to protect their interests. Finally, there was general agreement that flexibility in an allocation process must exist in meeting deadlines (e.g., for selecting the allocator, information gathering and filing briefs) to address site-specific conditions.

Concepts & Lessons Learned

This past year EPA has learned several important lessons on the relationship of allocation to settlement. In sum, EPA has learned that it is difficult to translate a shares agreement or allocation report into a judicial settlement, and difficult to settle with less than all of the parties and continue the allocation process. For example, some parties may be willing to perform the response action, while other parties would like to pay a sum certain (i.e., a cashout agreement). Several parties believed that providing an offer to settle for their "share" did not necessitate entering into a joint agreement to perform work with the other parties at the site. At one site, the Agency negotiated three Consent Decrees to address the various concerns. Such negotiations are resource intensive.

Another settlement issue involves problems with entering into an agreement regarding shares of responsibility with less than all of the parties. A partial settlement raises concerns that the allocator may assign the parties which remain in the allocation a smaller share than the share negotiated by the settlers. In effect, the non-settlers could possibly benefit by staying in the allocation process. The government position is difficult because parties who seek to settle early may offer to pay a significant premium or to fully perform the work. In addition, parties negotiating a settlement may also be forced to file briefs before the allocator in the event that settlement negotiations are not completed in a timely manner.

SUCCESS

Tulalip Landfill Site, Marysville, Washington

The U.S. recently lodged three Consent Decrees with the majority of the allocation parties at this site. In this settlement, one group of parties will perform the response action, and two separate groups of parties will provide funding for the cleanup. A number of federal entities are also part of the settlement. Allocation parties who are not part of the settlement remain in the allocation process. While the allocator must consider the shares of all the parties in the allocation, only those shares of the parties which did not settle were delineated in the allocation report. This limits the need for the settling parties to continue to participate in the allocation process, thereby saving transaction costs.

The settlement is also significant because the proceeds from a pre-allocation *de minimis* settlement are being provided to the performing parties. Under the pilot, *de minimis* settlers are excluded from the allocation process. Several parties were originally concerned that excluding *de minimis* parties from the allocation process might appear unfair. In effect, however, while the *de minimis* parties were excluded from the allocation process, the settlement proceeds from the *de minimis* settlement reduced the actual amounts the settling parties had to pay.

Hunterstown Road Site Gettysburg, Pennsylvania

- The generators and transporters requested the Agency adopt a private allocation that these parties reached amongst each other, rather than the allocator assigning shares to all parties.
- The Agency agreed to adopt the private allocation so the allocator only had to assign a group generator/transporter share, thereby saving transaction costs.
- All parties then agreed on the group share, submitted it to the allocator who promptly adopted it as part of the allocation report.

ECONOMIC REDEVELOPMENT

Reform in Brief

2-4.a. Brownfields Pilot Projects

Brownfields Assessment Demonstration Pilots are awarded by EPA under cooperative agreements to States, cities, towns, counties, and Tribes. These pilots are funded up to $200,000 over a two-year period and are designed to support creative explorations and demonstrations of brownfields solutions. The Pilots are intended to provide EPA, States, Tribes, municipalities, and communities with useful information and strategies as they continue to seek new methods to promote a unified approach to site assessment, environmental cleanup, and redevelopment.

The "Brownfields Economic Redevelopment Initiative" is a comprehensive approach to empowering States, local governments, communities and other stakeholders interested in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup and sustainably reuse brownfields. EPA originally addressed implementation of the Brownfield's Initiative through the Brownfields Action Agenda. This first Action Agenda was a collection of bold strategies focused on four main categories - 1) implementing Brownfields Pilot programs in cities, counties, towns and Tribes across the country; 2) clarifying liability and other issues of concern for lending institutions, municipalities, prospective purchasers, developers, property owners and others; 3) establishing partnerships with other EPA programs, Federal agencies, States, and cities and stakeholders; and 4) promoting community involvement by supporting job development and training activities linked to Brownfield assessment, cleanup and redevelopment.

As the Brownfields Initiative has matured, the need for continuation and expansion of the national brownfields response has led to introduction of the new Brownfields National Partnership Action Agenda, further linking environmental protection with economic redevelopment and community revitalization. The Brownfields National Partnership Action Agenda is a two-year plan featuring commitments from more than 25 organizations, including more than 15 Federal Agencies. The Agenda also features a 10 Showcase communities model for demonstrating successful collaboration on brownfields-related activities.

By the end of FY97, EPA had announced the selection of 121 Brownfields Pilots. These pilots will be funded through cooperative agreements are subject to negotiation. Of the 121 Pilots, 64 are National Pilots selected and funded through Headquarters, and 57 are Regional Pilots selected and funded through the 10 Regional offices. EPA intends the pilots to perform the following: provide redevelopment models, direct efforts toward the removal of regulatory barriers; and facilitate coordinated public and private efforts at the Federal, State, and local levels.

Results

By the end of FY97, EPA had announced the selection of 121 Brownfields pilots.

EPA awarded 24 grants to eligible assessment pilot recipients for the capitalization of revolving loan funds for the cleanup of brownfields sites. Grants of this type will not be awarded in FY98 unless mandated by specific statutory authority.

EPA has signed Memoranda of Understanding (MOU) with other Federal partners to coordinate issues related to

(continued see ***Brownfields)***

***Brownfields** continued...*

brownfields redevelopment and to leverage additional opportunities. In addition to previously signed MOUs with the Economic Development Administration, and the Departments of Housing and Urban Development, Labor, and Interior, EPA also has signed a MOU with the National Oceanic and Atmospheric Administration.

EPA conducted a Brownfields National Conference in Kansas City, Missouri, in September 1997. A variety of guidance documents and other initiatives have been announced by the Agency affecting the liability aspects of the Brownfields Action Agenda. In addition, EPA archived almost 30,500 sites from the Federal Superfund Inventory — CERCLIS.

Passage of the brownfields tax incentive proposal in 1997 was achieved as part of the budget agreement, and permits expensing of environmental remediation costs. ■

Next Steps

- Continue coordinating support for the efforts of the Federal Interagency Working Group on Brownfields
- Identify up to 100 assessment pilots in FY98
- Initiate expansion of site assessments
- Select 10 Brownfields Showcase Communities

SUCCESS

Baltimore, Maryland

Baltimore has sought to use the city's $200,000 grant to encourage economic growth and redevelopment in urban areas while continuing to provide appropriate and sufficient protection of the environment, especially the Chesapeake Bay watershed area.

Birmingham, Alabama

The North Birmingham Industrial Redevelopment Project centers on a 900-acre industrial area in which nearly forty percent of a formerly active property now lies vacant. In September 1995, the EPA awarded Birmingham a $200,000 grant under its Brownfields initiative to stimulate development of a 150-acre industrial park within the target area. Planners believe the area will see the creation of over 2,000 jobs

Burlington, Vermont

Burlington plans to develop a comprehensive brownfields plan, redevelop the city's brownfields with a high degree of citizen participation and support, and provide a redevelopment model that could be duplicated in small cities across the country.

Dallas , Texas

The City of Dallas, with help from the EPA is returning Brownfield properties into productive use for the community. With six sites in the cleanup and redevelopment process, $44.5 million in private investment has been leveraged, along with an $8.4 million public investment.

Emeryville, California

Since EPA's $200,000 grant, EPA and Emeryville have been working together to rejuvenate the City and the surrounding area, targeting ten sites and more than 180 acres for cleanup and redevelopment. The Brownfields Pilot established strong working relationships among the City's regulatory agencies, which facilitated a plan between the City and Catellus Development Corporation to redevelop abandoned former railyard site. Catellus constructed 200 units off mixed-income housing. Approximately 100 construction workers have been hired to build these housing units.

Oregon Mills, Oregon

The City of Astoria, Oregon has worked in partnership with the Oregon Department of Environmental Quality (DEQ), ECOTRUST, and the community to clean up the City's abandoned mill sites and transform them into thriving waterfront properties. In September 1995, Rural Development Initiatives, Inc., received a $200,000 EPA Brownfields Pilot grant to help jump-start the City's redevelopment efforts.

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BENEFITS

- Helps States, Tribes, and municipalities create redevelopment models, direct efforts toward the removal of regulatory barriers, and facilitate coordinated public and private efforts at the Federal, State, and local levels.
- Facilitates the reuse of underutilized or abandoned properties.
- Creates jobs and encourages community development in urban areas.
- Fosters economic prosperity and an increased tax base.

Reform in Brief

2-4.b. Brownfields Community Outreach

A Brownfields coordinator position has been established in each region to oversee Brownfields pilots and to initiate other Brownfields activities. EPA also has assigned seven staff members to cities through inter-governmental personnel assignments (IPA) to assist in addressing the Brownfields redevelopment challenges presented at the State and local levels.

The brownfields program is centered on partnerships - with other Federal, State, and local agencies, and diverse stakeholders. The Brownfields National Partnership Action Agenda is based on protecting human health and the environment, enhancing public participation in local decision-making, building safe and sustainable communities through public/private partnerships, and recognizing that environmental protection can be the engine that drives economic redevelopment.

EPA continues to be advised and informed on environmental justice issues relating to Brownfields through the National Environmental Justice Advisory Council (NEJAC). The NEJAC issued a final report, "Environmental Justice, Urban Revitalization, and Brownfields: The Search for Authentic Signs of Hope." The report analyzed the findings from the public dialogues held in June and July of 1995 on revitalization and Brownfields, and made recommendations. Community-based recommendations from the report are helping to shape the future course of the Brownfields Initiative from pilot application to determinations of future site redevelopment.

BENEFITS

- Improves community involvement in the Brownfields Initiative.
- Fosters job development and training.

In conjunction with the Common Sense Initiative (CSI), EPA has identified Brownfields pilots in several cities that provide opportunities to concentrate on Brownfields associated with particular industrial sectors. For example, several Brownfields pilots have been identified for linkage with the CSI "Iron and Steel Sector." EPA is now working with the sector to conduct an 18-month evaluation of two Brownfields pilots that will help to assess the efficacy of the "Brownfields Guiding Principles" developed by the sector.

EPA is working with the American Society for Testing

(continued see ***Community***)

***Community** continued...*

Materials (ASTM) to develop a standard guide titled, "The Process of Sustainable Brownfields Redevelopment." The purpose of these efforts is to identify the interrelationships between the financial, regulatory, and community involvement aspects of Brownfields revitalization. EPA and ASTM are working together to involve environmental justice and community representatives in workshops to develop the standard.

EPA is promoting and fostering job development and training through partnerships with Brownfields pilot communities and community colleges. EPA also is working with the Hazardous Materials Training and Research Institute (HMTRI) to expand environmental training and curriculum development. HMTRI has hosted a continuing series of workshops to assist community colleges from Brownfields pilot communities in developing environmental job training programs. The latest workshop was held in San Francisco, California, in June 1997. To date, HMTRI has worked with more than 60 community colleges. Through a cooperative agreement with EPA, Rio Hondo College (Whittier, California), has established an environmental education and training center to provide comprehensive technical-level training. In addition, EPA and the National Institute of Environmental Health Services (NIEHS) are working to coordinate minority worker training grant recipients with Brownfields pilot city activities. EPA will continue outreach to stakeholders on Brownfields involvement. Technical assistance to other Federal agencies and non-governmental organizations will be provided through existing partnerships and pilots. ■

Next Steps

- Work with NIEHS to coordinate minority workers with pilot activities
- Continue outreach to stakeholders and offer technical assistance

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Reform in Brief

2-4.c. Refining CERCLIS

The Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) is an automated inventory of site information for potential or confirmed hazardous waste sites addressed under the Federal Superfund program. To refine CERCLIS and encourage cleanup and redevelopment of contaminated or formerly contaminated sites, EPA has begun a process of "archiving" sites that no longer need to be tracked.

Over 41,000 sites have been entered into CERCLIS; however, less than five percent have made it onto the NPL. Until recently, sites that had been fully remediated or that had never made the final NPL were still listed in CERCLIS, and the perceived threat of Superfund liability remained. To rectify this problem, EPA refined the process for registering and maintaining site information in CERCLIS by archiving such sites.

In response to growing concerns about the unintended stigma associated with CERCLIS, EPA introduced the CERCLIS archiving effort in early 1995 as part of the Agency's Brownfields Economic

(continued see ***CERCLIS)***

Results

Of the 41,000 sites entered into CERCLIS: 24,000 CERCLIS sites were archived by February 1995; and **almost 30,500 sites** were archived from CERCLIS through FY97.

***CERCLIS** continued...*

Redevelopment Initiative. The Brownfields Initiative encourages cities, states, and private investors to clean up and redevelop contaminated or formerly contaminated sites. Archive candidates include sites where, following initial investigation, no contamination was found, or any contamination was removed quickly without requiring placement on the NPL; sites that have been completely cleaned up and deleted from the NPL; and sites where the contamination was not serious enough to warrant Federal Superfund attention.

The archiving effort is a continuous process and as more sites are entered into CERCLIS and/or screened out, the CERCLIS and archive lists will change.

SUCCESS

EPA is beginning to see results from its efforts at the Brownfields Pilot in Buffalo, New York. After removing the Republic Steel site from CERCLIS, ATDM Corporation, partnering with Village Farms of Buffalo, agreed to clean up a portion of the site in 1997 for use as a 25-acre hydroponic tomato farm. This new business will employ approximately 300 workers.

In June 1996, EPA provided guidance identifying types of sites eligible for archiving. Sites remaining in the CERCLIS inventory were evaluated, archiving decisions were made, when appropriate.

EPA has conducted outreach efforts to promote its site archiving efforts. In July 1995, EPA sent 200 mayors lists of archived sites in their cities. In April 1997, EPA developed a quick reference fact sheet, "Archival of CERCLIS Sites," and posted it on EPA's Brownfields Internet homepage. An inventory of CERCLIS and archived sites by State also is available on the Internet. ■

BENEFITS

- Removes the stigma associated with CERCLIS sites and facilitates their redevelopment.

Next Steps

- Continue to archive sites from CERCLIS

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Reform in Brief

2-4.d. Clarifying NPL Sites

EPA provides Regions with the flexibility to clarify uncontaminated areas within Superfund sites. To accomplish this, EPA has developed guidance and tools to identify, map, and track uncontaminated portions of sites.

Listing a property on the NPL may affect the value of that property and the surrounding area—whether or not all of the property or adjacent property is contaminated. In order to facilitate the transfer, development or redevelopment of property or portions of property determined to be uncontaminated, EPA, as a part of its economic redevelopment initiative, developed a program to provide Regions with the flexibility to clarify the areas of sites determined to be contaminated or uncontaminated.

(continued see ***NPL Sites)***

Results

Workgroup recommended a policy change to allow partial deletions.

EPA announced a policy change to allow partial deletions based on geography or medium (published in the Federal Register on November 1, 1995 (60 FR 55466)).

EPA announced a Round 3 Superfund Reform to encourage Regions to utilize partial deletions.

NPL Sites continued...

A workgroup was convened in May 1995 to evaluate several alternatives including: no partial deletion, partial deletion limited to closing and realigning bases (BRACs), and partial deletion available for all sites. The workgroup also considered geographic and medium limitations on partial deletions.

Based upon the workgroup's recommendation, EPA determined that the Regions should have flexibility to delete portions of any site (i.e., military base or other Federal Facility, or a private site), based on either geography or medium (e.g., groundwater). ■

Next Steps

- This reform is complete. The Round 3, partial deletions reform (i.e., Delete Clean Parcels from the NPL – Reform 9) is being implemented as a part of the Superfund program.

BENEFITS

- Facilitates the transfer, development or redevelopment of property or portions of property determined to be uncontaminated
- Provides Regions with the flexibility to clarify the areas of sites determined to be contaminated or uncontaminated

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Reform in Brief

2-4.e. Removing Liability Barriers: Prospective Purchaser Agreements (PPAs)

EPA identified options to encourage the cleanup and redevelopment of contaminated properties, giving prospective purchasers, lenders, and property owners more assurances that acquisition of such property will not also mean acquisition of liability. In May 1995, EPA revised its PPA guidance (see "Guidance on Agreements with Prospective Purchasers of Contaminated Property") to allow the Agency greater flexibility in entering into agreements with prospective purchasers. These agreements provide a promise by the United States not to sue the prospective purchaser for contamination existing at the time of purchase and provide contribution protection. The revised guidance expands the universe of eligible sites, allowing the use of such agreements when the agreement results in a substantial indirect benefit to the community in terms of cleanup, creation of jobs, and redevelopment of blighted property. A model PPA also was issued to streamline the process.

SUCCESS — **Vineland Chemical Superfund Site, Vineland, New Jersey**

EPA will receive $10,000 from the purchaser, as well as $309,912 of the purchase price of the property from the site owners pursuant to a consent decree. The purchaser, City of Vineland, represents that it has received two federal redevelopment grants to assist it in redeveloping the property as an industrial park, creating jobs in an economically depressed area.

Results

At the end of FY97, 68 prospective purchaser agreements had been reached.

SUCCESS

General Gas Mantle Superfund Site, Gloucester City, New Jersey

Purchaser plans to rehabilitate an abandoned 1.7 acre property which was previously contaminated with radioactive substances from gas mantle manufacture. The purchase is partially financed by the federally funded Cooperative Business Assistance Corporation. The purchaser is planning to expand its business and provide jobs in a depressed area.

Middlefield - Ellis - Whisman Superfund Site Palo Alto, California

A commercial development of high-tech research and office facilities in a campus-like setting is planned for this currently vacant site. The prospective purchaser will pay $200,000 to EPA, enabling the Agency to continue sampling at a nearby monitoring well for an additional two years.

San Gabriel Valley Superfund Site, Baldwin Park, California

Monsanto plans to purchase assets of a contact lens manufacturing company which has been a source of the contaminated groundwater plume. The purchaser will continue operations, and pay $150,000 to fund response for a portion of the Superfund site.

MRM Industries Site, Sikeston, Missouri

The purchaser – North Ridge Homes, a manufacturer of prefabricated homes –agreed to reimburse EPA $20,000 for costs incurred in a removal action. Sikeston, a city of 5,000 people, is very supportive of the agreement because of the 125 new jobs that the project will bring to the community.

Prier Brass Site, Kansas City, Missouri

The purchaser – CST Limited Liability Partnership – will provide deed restrictions on the property to maintain a protective cover, maintain the foundation of a building on site so as to not disturb the lead-contaminated material beneath it, pay EPA $50,000, and provide operation and maintenance activities. The company will use the property to house the headquarters of their demolition and construction business, a use which local authorities believe will help maintain property values in an area that is prone to attract salvage yards and unauthorized industrial dumping.

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COMMUNITY INVOLVEMENT AND OUTREACH

Reform in Brief

2-5.a. Community Advisory Groups (CAGs)

This initiative encourages Regions to establish Community Advisory Groups (CAGs) which provide a public forum for community members to present and discuss their needs and concerns about the decision-making process at sites affecting them.

A CAG is a committee, task force, or board comprised of citizens affected by a hazardous waste site. CAGs are made up of representatives with diverse community interests and provide a public forum for community members to present and discuss their needs and concerns about the decision-making process at sites affecting them.

The CAG concept was introduced in the first round of reforms in the arena of Expanding Meaningful Public Involvement. Initially the CAG program was part of the Environmental Justice strategy (Initiative 7) and was initiated to insure that all communities are part of the Superfund process. Several pilot sites were chosen to field test the CAG concept. The CAG program also appeared in the second round of reforms under Community Involvement and Outreach (Initiative 5), along with the Technical Assistance Grants program. This initiative articulated the progression of increased citizen involvement, called for the creation of guidance promoting and supporting CAGs, and encouraged the Regions to establish CAGs or convert existing community advisory organizations into CAGs. EPA issued "Guidance for Community Advisory Groups at Superfund Sites" (OSWER Directive: 9230.0-2) in December 1995, encouraging the use of CAGs at Superfund sites. The guidance has proven to be an effective mechanism for EPA's Regional offices to facilitate the participation of community members. Other products include a fact sheet titled, "Superfund Today Focus on the Community Advisory Group," issued in May 1996 (EPA 540-K-96-005), and a 4-page summary of the CAG guidance issued in August 1996, titled "Community Advisory Groups (CAGs) at Superfund Sites" (OSWER Directive 9230.0-28AFS).

CAG Toolkits are the most recent product created to support the CAG program. The kits are designed to help communities establish CAGs, with each kit containing a variety of information for use in setting up and maintaining a CAG. Two versions of the Toolkit were produced, one for EPA staff (in particular, the Community Involvement Coordinator) and one for the CAG. The Toolkits presently are being field tested

(continued see ***CAGs***)

Results

Initially, EPA slated the program to have 10 pilot CAG sites; however, the number of "pilot" sites grew to 16 between the time the program started and when it was officially taken out of the pilot stage. In July 1996 (at the National Community Involvement Conference in Chicago), EPA took the program out of the pilot stage and started accepting names of additional CAGs.

By the end of FY96, the number of CAGs had grown to 23. Ten additional CAGs were formed in FY97, bringing the **total to 33 CAGs.**

CAGs continued...

at 18 sites, and the final product should be available during the summer of 1998.

EPA will continue to evaluate existing CAGs and their impact on community involvement, and also will continue to identify and develop new tools to promote and assist CAGs. ■

Reform Evaluation

The effectiveness of the CAG program was evaluated using a case study approach. The case studies examined activities at specific sites and were developed based on interviews with community members involved in CAGs, EPA personnel, and State and local government personnel involved in site cleanup efforts. The five hazardous waste sites chosen for the case studies included: the Brio Refining, Inc., Superfund Site in Harris County, Texas; the Carolawn, Inc., Superfund Site in Chester County, South Carolina; the Colorado School of Mines Research Institute Site in Golden, Colorado; the Oronogo-Duenweg Mining Belt Site in Jasper County, Missouri; and the Southern Maryland Wood Treating Superfund Site in Hollywood, Maryland.

The case studies highlighted the following important lessons for communities considering formation of CAGs:

BENEFITS

- Creates mutual trust and demonstrates that EPA is a partner in solving community environmental problems.
- Enhances and accelerates the Superfund cleanup decision-making process.

SUCCESS

Southern Shipbuilding, Slidell, Louisiana

After a CAG was formed, more than a dozen formal and informal meetings with concerned citizens and elected officials were held to shape site studies and remedy selection. A striking measure of this community involvement is that an incineration remedy in the middle of the City received majority support from residents (and unanimous endorsement by the City Council).

Allied Paper, Inc., Portage Creek/Kalamazoo River, Michigan

The CAG at this site, consisting of State Officials and local citizens, facilitated community involvement. The CAG meets bimonthly and has sent site progress reports and fact sheets to more than 600 citizens in an effort to keep them informed of the progress at the site.

Brio Refining, Harris County, Texas

A CAG was formed in 1994 to allow citizens and local officials to participate in decisions affecting the cleanup of this site. The CAG meets regularly and maintains a mailing list of 827 citizens. In 1995, the CAG prepared and submitted an application for a new Technical Assistance Grant to increase their understanding of the cleanup solutions being proposed for the site.

Colorado School of Mines Research Institute, Golden, Colorado

EPA helped establish a CAG which allowed for the enhancement of the Superfund cleanup decision-making process through direct community involvement. This site was used as a case study in a document recently completed by EPA.

1. CAGs should be formed as early as possible.
2. The community must take the initiative in CAG formation and operation.
3. CAGs must be inclusive and independent
4. Access to good technical expertise is important.
5. The CAG must recognize what is possible and work within those limits.
6. CAG leaders must be “in it” for the long haul.
7. CAGs are more effective than public meetings.
8. The need for additional resources is a common concern.
9. CAGs can give the community more influence in site-related decisions.
10. CAGs can speed up the process.

Based on the positive results of the case study evaluation, EPA will continue to pursue CAGs where appropriate.

Stakeholder Comments

David Hall, Emergency Management Coordinator for the City of Texarkana, was very supportive of CAGs at the Local Government Relocation Forum held on April 18, 1997. He commented that CAGs were, "the best thing since home-made bread."

According to Mr. Schrader, Brio Refining Inc., CAG Co-Chair, the CAG has been successful because, "dedicated people from the community have been willing to work hard, over a long period of time to get our positions taken into account."

Catherine O'Brien, Brio Refining Inc., CAG Member from San Jacinto College stated that prior to the CAG, "the community could talk to EPA in public meetings, but that wasn't very productive. The PRPs could meet with EPA anytime, because they worked on the site issues all day; the community couldn't, because we have other jobs to do. The CAG has leveled the playing field." She also said she believes the CAG concept is, "the best way to resolve issues at Superfund sites, because everyone talks and listens to each other."

Mr. White, Carolawn Inc., Community Advisory Board Chairman stated, "Regardless of how the decision is made, residents now feel they have had some input."

Next Steps

- Continue to test CAG Toolkits at various sites
- Evaluate CAGs and develop new methods to promote and assist CAGs

Pilots

Completed July 1996.

Contact

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Reform in Brief

2-5.b. Technical Assistance Grants (TAGs)

TAGs provide resources to eligible communities affected by Superfund sites to acquire independent technical assistance to help them understand and comment on site-related information.

Basic Provisions of the TAG Program:

Grants of up to $50,000 are available to community groups for hiring technical advisors to help the community understand site-related technical information. Additional funding may be available for unusually large or complex sites.

The group must contribute 20 percent of the total project costs to be supported by TAG funds. This requirement can be met with cash, donated supplies, and volunteered services.

(continued see *TAGs)*

Results

More than 195 TAGs have been awarded since the program's inception in 1988.

TAGs continued...

The group must prepare a plan for using the funds.

EPA is encouraging the Regions to consider means to increase citizen involvement, such as advance funding of TAGs, the authorization of training for TAG recipients, and the simplification of the TAG application and administrative processes.

The TAG regulation, which was revised during FY95-96, and which the Agency plans to publish in FY98, contains several simplifying provisions. For example, elimination of the three-year budget period will allow groups to determine their own budget period according to site-specific needs. ■

Next Steps

- Promote citizen involvement by improving TAGs and facilitating the process
- Publish proposed and final revisions to the TAG regulation in FY98

SUCCESS — **Southern Shipbuilding Site Slidell, Louisiana**

A group named Slidell Working Against Major Pollution (SWAMP) was awarded a TAG grant on December 15, 1995. SWAMP hired two technical advisors on June 17, 1996, to review site documents prior to release of the final proposed plan of action.

This approach created mutual trust and the concept that EPA was a partner in solving community environmental problems. A striking measure of this community involvement is that an incineration remedy in the middle of the City received majority support from residents (and a unanimous endorsement by the City Council).

BENEFITS

As stated above, preparations are underway to publish the proposed revised rule by March 1998. This revised rule will contain the following:

- Provisions for limited cash advances
- Limited funds for training community members on site-related issues.
- Removal of a 20 percent administrative cap, providing EPA flexibility in negotiating grants with recipients
- An interpretation of congressional intent regarding the Superfund Amendments and Reauthorization Act's (SARA) "one TAG per site language" such that the rule allows multiple non-concurrent grant recipients.

Contact

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About the Pilot

2-6. Community Involvement in the Enforcement Process Pilots

In February 1995, EPA announced its commitment to pilot ways in which community involvement in the enforcement process could be enhanced as part of the Superfund Reforms effort. EPA initiated pilot projects at 13 sites in 9 of its 10 Regions for cases in which PRPs committed to conduct cleanup actions or investigations. Several approaches were implemented, including inviting communities to review and comment on draft technical workplans and actively disseminating information. EPA piloted these approaches to observe what impact they have on Superfund cleanups and settlement negotiations. At some selected sites, piloted activities are completed; at other sites, EPA continues to test various approaches. Activities found to be effective are being utilized at a number of sites outside the pilot project.

Many of the piloted activities involve providing opportunities for communities to discuss and review draft technical plans (i.e., draft work plans for investigations of site contamination and design and conduct of cleanups) to be implemented by PRPs. For sites in the early stages of the cleanup pipeline (i.e., investigations), Regions intend to continue enhanced community involvement measures during the later stages of the cleanup pipeline (i.e., remediation). Other piloted activities in this initiative include citizen involvement in removal actions implemented by PRPs; developing consensus on future land use; and citizens review of treatability study documents prepared by PRPs.

These piloted activities are related to, but distinct from, the steps that the Agency already takes at each site to involve the community whenever it selects a response action or finalizes a settlement agreement (i.e., the opportunity for public review and comment on proposed cleanup plans or settlements). It is also distinct from a separate Superfund reform involving the establishment of Community Assistance Groups (CAGs) at Superfund sites. ■

Stakeholder Comments

Community members thought EPA had been successful at making site information available to them, providing them with the opportunity to comment on technical documents, considering their input, and providing them with an opportunity to communicate with PRPs.

By the end of the process, the PRPs had a better appreciation of the views of other stakeholders.
(From participants at the Pine Street Barge Canal, Vermont Pilot)

Lessons Learned

- Communities who regularly attend technical meetings are more informed and, therefore, better able to understand the progress of response activities at a Site;
- Greater degree of community involvement may result in time and resource savings in the longrun;
- Providing opportunities to comment on technical documents is an effective way to enhance community involvement; and
- It may be difficult to reach consensus on future land use, even when mediation efforts are implemented.

SUCCESS

Asarco Tacoma Smelter, Tacoma, Washington

At the Asarco Tacoma Smelter in Tacoma, Washington, the community was given the opportunity to review and comment on the Site Community Relations Plan and draft cleanup work plans as well as provide input on road closures and transportation impacts, future land use and institutional controls. EPA's Region 10 office intends to continue enhanced community measures during the ongoing design of the cleanup and get feedback from the community during the redevelopment of the site.

Eagle Mine Site Minturn, Colorado

At the Eagle Mine site in Minturn, Colorado, the Eagle River Environmental and Business Alliance (the Alliance), a group of community residents, was given the opportunity to review and comment on draft cleanup work plans prepared by the parties performing the cleanup. Many of the comments received from the Alliance were used to guide and formulate cleanup activities. In addition, the Alliance was very much involved in the review of the controversial series of risk assessments conducted around a middle school adjacent to the site. Because of the Alliance's review and agreement with EPA's risk conclusions, the controversy was resolved to the public's satisfaction. The Alliance continues to be involved in the ongoing Eagle Mine project.

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ENVIRONMENTAL JUSTICE

Reform in Brief

2-7.a. Training and Health Service Assistance to Communities

EPA and the U.S. Public Health Service (PHS) established the Medical Assistance Plan (MAP) to respond to the health concerns of under-served citizens living near hazardous waste sites.

In the summer of 1994, EPA requested assistance from the Public Health Service (PHS) to respond to health concerns of communities near hazardous waste sites. In response to this request, the Superfund Medical Assistance Work Group (SMAWG) was established to develop the Medical Assistance Plan (MAP). The first phase of MAP implementation will assess the health care needs and concerns of the community and evaluate nearby primary care capacities. The second phase, according to the community's need for assistance and the availability of budget and personnel services, will provide:

- Physician training and placement;
- Medical testing to assess health affects related to hazardous substance exposure;
- Technical assistance to local agencies and health care providers;
- Environmental health education to health care providers;
- Referral services to assist individuals in locating medical specialty clinics or specialists; and
- Medical followup for individuals who demonstrate documented exposure to hazardous substances or adverse health conditions related to possible exposures.

A third phase will include an evaluation of the effectiveness of the results. The Agency will test the MAP program at various Superfund sites.

Although EPA targeted four sites for program testing during FY95, project funding was available at only one site, the Del Amo/Montrose site in Torrence, California, for which EPA obligated $400,000. EPA Region 9 as well as ATSDR have been working closely with clinic physicians to determine the need for environmental sampling to respond to clinic results. Residents temporarily relocated by EPA have been permanently relocated by Del Amo PRPs. EPA and PHS will continue to seek funds sufficient to finance additional pilot projects in FY98. ■

Results

The Superfund Medical Assistance Work Group (SMAWG) has outlined three phases of the Medical Assistance Plan (MAP). Four sites have been targeted for program testing, and **EPA designated $400,000 for MAP** implementation at the Del Amo/Montrose site in Torrence, California. Temporary relocation efforts have begun at the site.

Next Steps

- Continue to implement the MAP program at the Del Amo/Montrose Site
- Secure funding to finance FY98 pilot projects

BENEFITS

- Improves delivery of existing medical services to communities with potential exposures to hazardous substances.
- Builds environmental health expertise in communities through physician training and placement.

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Reform in Brief

2-7.b. Superfund Jobs Training Initiative (SuperJTI)

EPA has developed interagency partnerships to train and employ community residents living near Superfund sites through classroom instruction and hands-on work experience.

While the purpose of the Superfund Program is to clean up the Nation's worst hazardous waste sites, citizens face many challenges from environmental problems, and related social stresses, in communities affected by Superfund sites. The Superfund Jobs Training Initiative is a response to public demand for more economic benefit, at the local level, from Superfund site cleanups. The Superfund Program is taking a "partnership" approach to find the right resources and providers to enable communities to solve their own problems; and enable the Superfund Program to focus on Superfund. ■

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Next Steps

- Continue to award grants for health and safety programs.

Results

Funded NIEHS's minority worker trainng program in FY97 and started pilots at five Superfund sites through EPA's Superfund Jobs Training Initiative.

BENEFITS

- This initiative will help increase opportunities for job training and employment in neighborhoods affected by Superfund sites, particularly in socio-economically disadvantaged communities.

SUCCESS

NL Taracorp Superfund Site, Granite City, Illinois

EPA Region 5 Superfund staff and the National Institute of Environmental Health Sciences (NIEHS) are working with an Environmental Justice (EJ) community at this site. This SuperJTI effort has included sending flyers on SuperJTI along with DePaul University's Minority Worker Training Program application to approximately 1,600 homes. DePaul will begin an intensive screening/interviewing process to select approximately 20 people by the end of December, and start training in January. Similar to other Regions, training will include life skills training followed by the 40-hour OSHA approved health and safety course as well as lead and asbestos abatement courses.

RSR Smelter Site, West Dallas, Texas

In West Dallas, EPA is working with the City of Dallas, New Start, the West Dallas Neighborhood Development Corporation (WDNDC) and Laborers AGC to provide 40-hour Hazardous Materials Workers training to community residents. WDNDC and New Start are recruiting the students and working with the City of Dallas to provide transportation to the training site.

Albuquerque, New Mexico

In Albuquerque, New Mexico, EPA is working with the United Brotherhood of Carpenters (UBC), NIEHS, and Dolores Hererra, of the AT&SF site, to offer the SuperJTI classes there.

Agriculture Street Site, New Orleans, Louisiana

Several SuperJTI training initiatives are ongoing. Xavier University provided EPA and the Army Corps of Engineers with names of past graduates of the Xavier Minority Workers Training Program. These certified students may be considered for work in the first phase of construction work at the community center.

Partnership in Chattanooga Chattanooga, Tennessee

The Southeast Tennessee Private Industry Council (PIC), the Tennessee Valley Authority (TVA), the Global Environmental Technology Foundation (GETF), and the National Association of Minority Contractors (NAMC) have agreed to partner with EPA on jobs training in Chattanooga. EPA Region 4 and NAMC will augment the PIC/TVA/GETF "Envirojobs" program with hazmat training and collaboration on a jobs fair. This SuperJTI effort for the Tennessee Products site will serve the Alton Park/Piney Woods communities, through the Community Advisory Group, by providing opportunities for jobs training and enhanced access to community services. This is the first SuperJTI project that does not rely upon NIEHS funding.

CONSISTENT PROGRAM IMPLEMENTATION

Reform in Brief

2-8. Guidance for Remedy Selection

To improve consistency and take advantage of streamlining opportunities in site characterization and remedy selection, EPA prepared the following documents: "Soil Screening Guidance"; "Land-Use Directive"; and several Presumptive Remedy Guidance documents.

SOIL SCREENING GUIDANCE — EPA issued final "Soil Screening Guidance" (OSWER Directive 9355.4-17A) on May 17, 1996. The soil screening levels established in the guidance will complement the ongoing Superfund Accelerated Cleanup Model (SACM) initiative and also provide the framework for other cleanup efforts, such as RCRA corrective actions, voluntary cleanup programs, and State/Tribal cleanup programs. Additionally, the development of soil screening levels will be useful in streamlining baseline risk assessment. The "Soil Screening Guidance: User's Guide," "Fact Sheet," and "Technical Background Document" also have been posted on the EPA/Superfund Homepage on the Internet.

LAND-USE DIRECTIVE — On May 25, 1995, EPA issued a new directive entitled, "Land Use in the CERCLA Remedy Selection Process" (OSWER Directive 9355.7-04). This memorandum clarifies that land use should be considered in risk assessment and remedy selection. In addition, it describes how the assumptions about land use should be made by involving the community, considering the context of the site, and determining the site's potential for reuse. One of the memorandum's important messages is that an assumption of land use other than residential (e.g., industrial) may be appropriate in remedy selection. The impact of this memorandum will be to create more remedies tailored to the specific context of sites, improve community involvement, and more support for cleanup decisions.

PRESUMPTIVE REMEDIES — EPA issued a general presumptive remedy document, "Policy and Procedures," in September 1993. The Agency published the first Wood Treater presumptive remedy along with presumptive remedies for VOCs in soils and municipal landfills in December 1995. EPA completed the "Ground Water Presumptive Response Strategy" in October 1996. The Agency completed a "User's Guide for VOCs in Soil Presumptive Remedy" (OSWER Directive 9355.0-48FS) in July 1996. A final draft of a "User's Guide to Accompany the Wood Treaters Presumptive Remedy" (OSWER Directive 9200.5-162) was issued for review and comment in August 1996. Although EPA's primary focus is on the development of new presumptive remedies, it also has begun to evaluate existing presumptive remedies.

(continued see ***Remedies)***

Results

The Agency has completed a supplemental bulletin which discusses the time and estimated future cost reductions demonstrated by the municipal landfill pilot sites. EPA estimates **time savings ranging from 36 percent to 56 percent,** and future cost reductions up to 60 percent at the municipal landfill pilots. In addition, "Municipal Landfill on Military Bases Presumptive Remedy," (OSWER Directive 9355.0-62FS) developed by the Office of Federal Facilities Enforcement, appears to be widely utilized.

***Remedies** continued...*

EPA published the "Manufactured Gas Plant Presumptive Response Strategy" in February 1997, and the presumptive remedy for PCB sites in April 1997. EPA has been engaged in a dialogue with the Department of Agriculture to produce a Grain Storage presumptive remedy that would bridge to the existing VOC and Ground Water presumptive remedies. The Agency developed a Metals in Soils presumptive remedy in partnership with DOE in FY97. Currently, EPA is developing a presumptive remedies supplemental bulletin for future beneficial uses of municipal landfills. The Agency also is preparing a supplemental bulletin for dual- or multi-phase extraction (MPE) to assist site managers using the VOCs presumptive remedy. Additionally, OERR is developing a list to track the universe of presumptive remedy sites. This list will aid in evaluating the time and future cost reductions for presumptive remedies. Future supplemental bulletins that will document time and future cost reductions, as well as other benefits associated with the use of presumptive remedies are planned. ■

SUCCESS — **Presumptive Remedy Process Region 9**

Region 9 reports they have nine sites that selected the remedy recommended by the presumptive remedy guidance, or which are in the presumptive remedy process.

The EPA Office of Inspector General (OIG) conducted an independent review of the use of presumptive remedies entitled, "Review of Cleanup and Pilot Project at South Indian Bend Wash Superfund Site in Tempe, Arizona." In the summary of OIG's major findings, the report concluded: "Use of a *Presumptive Remedy* increased consistency in decision-making by taking advantage of lessons learned at similar sites, and allowed speedup of the Feasibility Study process." The report acknowledged that the use of "presumptive remedies is expected to create greater consistency, certainty and quality of remedy decisions in the near term. Time and cost savings are expected to increase over time. . . ."

Next Steps

- Issue a supplemental bulletin for multi-phase extraction to assist site managers using VOCs presumptive remedy
- Develop additional bulletins to document time and future cost reductions
- Continue evaluating existing presumptive remedies

BENEFITS

- EPA estimates that recommendations from these guidance documents have been implemented at an increasing number of sites, resulting in significant cost and time savings.

Contacts

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Reform Evaluation

The presumptive remedies for municipal landfills and VOCs in soil were issued in September 1993. The presumptive remedy for woodtreater sites was issued in December 1995. OERR is evaluating the degree to which they are being implemented, the effectiveness of the presumptive remedy approach for these site categories, and any benefits resulting from implementation of the presumptive remedies. In order to make this evaluation, OERR is developing data sets on sites where the presumptive remedy has been implemented and candidate presumptive remedy sites in the pipeline. Also OERR is incorporating an RPM notification system for presumptive remedy sites into WASTELAN (CERCLIS 3).

Reform in Brief

2-9.a. Risk Sharing: Implementing Innovative Technology

EPA will agree to share the risks associated with implementing innovative technologies for a limited number of approved projects by "underwriting" the use of certain promising innovative approaches.

In order to encourage PRPs to try new approaches, EPA may agree to reimburse up to 50 percent of the cost of selected innovative remedies if the remedy fails and subsequent remedial action is required. EPA has agreed to risk-sharing at one site.

The Agency is in the process of preparing guidance on implementing the risk-sharing initiative, which is expected by February 1998. Also, given the increased State role in remediation, EPA is interested in engaging State agencies in this initiative. ■

BENEFITS

- Promotes use of innovative technologies that may achieve faster, less costly cleanups by mitigating the risks associated with implementing these projects.

Next Steps

- Issue guidance on implementing the risk-sharing initiative
- Explore ways to involve State agencies in risk-sharing agreements.

Results

EPA has entered a risk-sharing agreement with a PRP at one site. The Agency has begun preparing guidance that will direct future risk-sharing initiatives.

Contacts

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SUCCESS

Somersworth Sanitary Landfill Site, Somersworth, New Hampshire

Under a risk-sharing agreement with a PRP, EPA agreed to pay half the cost of the innovative technology, not to exceed $3.5 million, if the technology does not fulfill expectations and additional remedial action is necessary. The technology involved, an innovative "funnel and gate," helps to restore ground water by channeling the flow to a permeable wall containing iron filings. Contaminants are removed as they pass through the gate. If successful, this *in situ* technology may serve as an alternative to costly and protracted "pump and treat" approaches.

Reform in Brief

2-9.b. Risk Sharing: Identifying Obstacles to Using Innovative Technology

EPA developed programs to share implementation risks associated with the use of innovative technologies.

Following discussions with some members of the Response Action Contractor (RAC) community, EPA learned that the lack of indemnification for prime contractors is hampering the use of innovative technology. Prime contractors are unwilling to recommend innovative technologies for fear that they will be sued for negligence in not recording "tried and tested" technologies. Without indemnification, there is little incentive for the prime contractors to select an innovative technology. Furthermore, a prime contractor may not choose to test an innovative technology if, again, there is a fear of lawsuits if the technology does not perform as expected.

BENEFITS

- Promotes the use of innovative cleanup technologies.

To address these concerns, EPA is expanding indemnification coverage to include both the prime contractor and the innovative technology contractor when indemnification is offered. Thus, both the technology vendor and the prime will be provided protection from third party negligence claims that may result from a pollution release. A statement on EPA's offering of indemnification is presented in an "Innovative Technology Policy Directive" (OSWER Directive 9380.0-25) published by OSWER on April 29, 1996. To date, this protection has not been requested by any vendors or primes. Implementation of this reform is considered complete. ■

Results

EPA has expanded indemnification coverage to include both the prime contractor and the innovative technology contractor. The Agency's 1996 document, "Innovative Technology Policy Directive," provides a clear statement of EPA's indemnification policy.

Contact

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Next Steps

- Implementation of this reform is complete.

STATE AND TRIBAL EMPOWERMENT

Reform in Brief

2-10. Voluntary Cleanup Program

EPA seeks to support and promote effective State/Tribal voluntary cleanup programs, and, in conjunction with the Brownfields Initiative, provide limited financial assistance to such programs.

Approximately 35 States have implemented voluntary cleanup programs (VCP). Eleven States (Missouri, Michigan, Minnesota, Wisconsin, Indiana, Illinois, Texas, Colorado, Delaware, Rhode Island and Maryland) signed Memoranda of Agreement (MOAs) with their respective Regions concerning how EPA and the States will work together to support protective cleanups of voluntary cleanup program sites and sustainable redevelopment of Brownfields sites.

On September 9, 1997, EPA issued draft guidance on developing Superfund Regional/State Memoranda of Agreement concerning State voluntary cleanup programs. EPA reviewed the 78 comments submitted to the docket for this draft guidance as well as other communications and outreach efforts with stakeholders. Based on this review, it is clear that there is currently no consensus among various stakeholders on critical aspects of the guidance or on the appropriate course of action for EPA. It does not seem likely that the Agency could issue a final guidance in a timely manner. Therefore, EPA has withdrawn the proposed final draft guidance it published in the Federal Register. EPA/State MOAs concerning State VCPs continue to be a good way for EPA to promote effective programs and their success. For negotiation of future MOAs, Regions should look to the November 14, 1996, memorandum entitled "Interim Approaches for Regional Relations with State Voluntary Cleanup Programs" as a framework for these negotiations. This will enable Regions and States to negotiate MOAs on a case-by-case basis that can be customized to better fit the State's voluntary cleanup program and legislation. ■

Next Steps

- EPA anticipates signing up to $15 million in cooperative agreements during FY98

Contact

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Results

35 States have implemented voluntary cleanup programs (VCP) since the program's inception. **11 States have signed Memoranda of Agreement (MOAs)** with their respective Regions. A November 1996 memorandum, "Interim Approaches for Regional Relations with State Voluntary Cleanup Programs," provides a framework for MOA negotiations.

BENEFITS

- Promotes cooperation between States/Tribes and Regions.
- Provides limited financial assistance to State/Tribal voluntary cleanup programs.

Reform Evaluation

Through core cooperative agreements, EPA distributed $10 million of FY97 funding to support State Voluntary Cleanup Program infrastructure. EPA's FY98 budget is $15 million for VCP infrastructure support. The November 14, 1996 memorandum completes this reform.

Reform in Brief

2-11. Integrated Federal/State/Tribal Site Management Program

EPA and States are working together to develop a pilot program under which States, Territories, Commonwealths, and Federally recognized Tribes would oversee and compel PRP actions at selected NPL-caliber sites.

On May 2, 1995, EPA issued final guidance on the deferral program. The deferral program allows EPA to defer listing considerations for NPL-caliber sites while States and Tribes initiate and oversee PRP responses. The Agency originally expected to evaluate the pilots to determine how to improve the guidance to facilitate greater State empowerment and more effective cleanups.

In addition to implementing the deferral program, EPA Regional offices worked to increase State participation through innovative site characterization cooperative agreements (CA) and new funding for Tribes. ■

BENEFITS

- Facilitates State empowerment and more effective cleanups by deferring sites from NPL listing and handing cleanup responsibilities to State or Tribal environmental agencies.

Results

EPA has signed **deferral agreements with 12 States, covering 30 sites.** 12 of these sites have completed the remedy selection phase. The Agency's Regional offices have also increased State participation through characterization cooperative agreements (CA) and additional Tribal funding.

SUCCESS Remedies

The FY95 and FY96 EPA appropriations reports required EPA to obtain Governors' concurrence as a prerequisite to listing sites on the NPL, and this had the effect of reducing the importance and effectiveness of this reform. Also, the need for the reform has been reduced as a result of the growing importance of State voluntary cleanup programs. Still, as of November 1997, EPA has signed deferral agreements, covering 30 sites, with 12 states, and four of those agreements have been signed over the past two years. Remedies have been selected at 12 of the sites.

Contact

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Next Steps

- Evaluate OIG review of State deferrals and determine appropriate followup actions.

Reform Evaluation

In 1997, the Office of Inspector General (OIG), with support from OERR, initiated a review of Superfund deferral sites, including State deferrals. OERR will be working with the OIG to evaluate the results of the review and determine appropriate followup actions.

Reform in Brief

2-12. State/Tribal Superfund Block Funding

Superfund Block Funding offers ways for States and Tribes to realize greater flexibility in their use of Cooperative Agreement (CA) resources. EPA, working in conjunction with States and Tribes, has developed recommendations to enhance State and Tribal involvement through improved administration of assistance agreements.

In March 1995, EPA's Office of Emergency and Remedial Response (OERR) formed the Superfund Block Funding Workgroup to explore ways in which States and Tribes could realize greater flexibility in their use of Cooperative Agreement resources. EPA currently enters into several types of site- and non-site-specific cooperative agreements with States to conduct or assist Superfund response actions. The Workgroup has developed recommendations to enhance State involvement in Superfund through improved administration of assistance agreements. The intent of this initiative is to incorporate block funding recommendations into program operational procedures. The Block Funding Workgroup report is complete and was distributed.

In order to insure the benefits derived from the Block Funding recommendations are realized, OERR has developed a block funding implementation plan that includes the following activities:

- OERR is working with the Office of the Comptroller to insure that regions are allowed to shift funds from existing cooperative agreements to block funding cooperative agreements. FY98 deobligation guidance allows for this procedure.
- Class Deviations from parts of 40 CFR Part 31 and 40 CFR Part 35 have been submitted.
- Monitoring, evaluating, and refining implementation.
- Documenting Agency-wide and State government savings in full-time equivalents (FTE), as well as, in increased improvement of program implementation. ■

Next Steps

- Issue final report documenting obstacles in awarding and utilization of Superfund resources (12/97)
- Evaluate ongoing pilots in FY98

Results

EPA established a 50-member workgroup on block funding which included input from 17 States and Tribes. Block Funding Pilot projects launched under the recommendations developed by the workgroup are already manifesting resource savings to both levels of government. For example, the State of Illinois is reporting an **85 percent reduction in preparation and processing of paperwork** due to regulatory deviations received under their Block Funding Pilot. Regulatory deviations from portions of 40 CFR Part 31, procured under the auspices of the Block Funding Reform, allowed the State of Illinois to cut at least three months out of the remedial process for one Superfund site and insured that construction would not be delayed into

(continued see ***Results***)

Results, continued

the next construction season. The following nine States and three Tribes are currently piloting the Block Funding reform: Colorado, Illinois, Hawaii, Massachusetts, Minnesota, Missouri, Nevada, Ohio, Utah, the Hoopa Tribe, the Tohono O'Odham Tribe, and the Gila River Tribe.

BENEFITS

- Allows States and Tribes to direct CA funds between sites and activities to the extent allowed by the Advice of Allowance.
- Insures that States have the ability to transfer funds from site and activity, within the approved tasks for the cooperative agreement, without prior EPA approval.
- Reduces specific administrative budget and reporting requirements, where appropriate, which can produce resource saving for both levels of government.

SUCCESS Block Grant Illinois

In January 1996, Illinois EPA and USEPA began work on the Block Grant concept as a way to streamline the state role and its linkage to Federal funding. Both agencies agreed that this pilot should cover as many sites as possible while leaving fiscal safeguards in place. USEPA also was seeking some relief in the number of CA amendments that it was processing.

By the end of 1996, Illinois EPA had completed status reports and budgets for each site, the Core Grant, and the Site Assessment Grant, which were included as part of the Block Grant. Illinois EPA's application was fairly straightforward and not as difficult as originally anticipated. USEPA-Superfund seemed to have the more difficult job of convincing other segments of USEPA to loosen control and oversight. They also were faced with deobligation, reobligation, deviation requests and Headquarters concerns. Nevertheless, the Block Grant was awarded in February 1997.

The Block Grant has resulted in far fewer CA amendments in 1997 as compared to 1996. In that year, USEPA processed 7 Illinois EPA CA applications. With only one quarter left in FY97, Illinois EPA had only submitted one CA application. This is a dramatic 85 percent drop in the preparation and processing of fiscal paperwork due to the Block Grant. This has saved both USEPA and Illinois EPA a great deal of time, effort, and resources which are better spent on cleanups.

The Block Grant also has allowed Illinois EPA to go from quarterly reporting to bi-yearly reporting. While Illinois EPA continues to send quarterly financial statements for cost recovery purposes, project status updates are now sent on a bi-yearly basis. This has resulted in a 50 percent drop in the effort expended in reporting.

The Block Grant allows Illinois EPA to transfer money from one project to another based on need and changing program priorities. Illinois EPA is required to report on each budget shift, but prior USEPA approval is not needed and delays associated with CA application preparation and processing are largely eliminated.

Illinois EPA has recently decided to use the Block Grant's flexibility to transfer additional money into the Parsons Casket project. The Parsons Casket ROD was completed by Illinois EPA in September 1996. USEPA decided at that time to pursue a settlement with a former owner of the site. In October 1997, USEPA announced a tentative cash-out settlement with the PRP. Instead of waiting until the next fiscal year for available funds, this settlement allows Illinois EPA to immediately begin design work on the remedy. The Block Grant's use has cut at least three months out of the remedial process and has insured that the remedy is constructed in the next construction season. Without the Block Grant, design and contractor procurement would have prevented construction in FY98.

Illinois EPA continues to believe that the Block Grant is a necessity for the State role in a reauthorized Superfund Program.

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